

# **Idaho Policy for Designation of Local Workforce Development Areas Under the Workforce Innovation and Opportunity Act (WIOA) For Public Comment – August 10, 2015 to September 20, 2015**

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**Purpose:** As directed by U.S. Department of Labor Training and Employment Guidance Letter 27-14, the Workforce Innovation and Opportunity Act of 2014 requires the Governor to develop a policy for designation of local workforce development areas in consultation with the State Workforce Development Council, chief elected officials and consideration of public comments.

**Reference:** WIOA Section 106(b); TEGL 27-14

## **Definitions**

Initial Designation – The period of initial designation applies to program years 2015 and 2016 for the two existing local areas under WIA.

Subsequent Designation – The period of subsequent designation applies to program years 2017 and beyond.

Performed Successfully - Met or exceeded the negotiated levels of performance for the last two consecutive program years.

Sustained Fiscal Integrity – The Secretary of Labor has not made a formal determination that either the grant recipient or the administrative entity of the area mis-expended funds due to willful disregard of the requirements of the provision involved, gross negligence, or failure to comply with accepted standards of administration for the two-year period preceding the determination.

## **Status of Local Areas under WIA**

In 2005, Governor Kempthorne desired to consolidate the existing six local workforce development areas into a single state area. Due to regulatory constraints, Governor Kempthorne instead created two local areas: the East-Central District local area and the Balance of State local area. These two local areas have operated as a consortium and single, statewide planning region with the Workforce Development Council serving as the local board.

## **Initial Designation under WIOA--WIOA Sec. 106(b)(2)**

The East-Central District local area and the Balance of Idaho local area met the eligibility requirements for initial designation as local areas under WIOA by having performed successfully and sustained fiscal integrity. The Governor's Workforce Development Council will recommend for the Governor's approval the initial designation of these two local areas through June 30, 2017.

## **Subsequent Designation under WIOA--WIOA Sec. 106(b)(3)**

After July 1, 2017, the two existing local areas will be eligible for subsequent designation if each performed successfully, sustained fiscal integrity and meet the requirements for regional planning as outlined in WIOA Sec. 106(c)(1). It is not necessary for the two local areas in existence under WIA as of 2014 to submit letters for application.

## **Designation on Recommendation of State Workforce Development Council -- WIOA Section 106(b)(4)**

After the initial designation period and upon the Council's recommendation to the Governor, the Governor may approve a request from any unit of general local government for a geographic area to be designated as a local area. Designation will be made at the discretion of the Governor.

Applicants will be required to:

- Submit an application for designation prior to December 31<sup>st</sup> for consideration for the subsequent program year;
- Demonstrate labor market area through commute patterns;
- Include letters of commitment from local elected officials and employers;
- Identify available and appropriate education and training institutions;
- Identify an entity that can serve as a WIOA-compliant local workforce development board\*;

- Identify federal and non-federal resources to fund the activities of the local board; and,
- Demonstrate that the creation of the new local area will not divert federal resources from existing local areas.

**\*A concurrent application for certification of a local workforce board should be submitted according to the Idaho Policy for Appointment/Certification of Local Workforce Development Boards.**

#### **Redesignation Assistance under WIOA--WIOA Section 106(b)(6)**

At the request of all of the local areas in a planning region, funds will be made available to facilitate activities required for redesignation of the existing local areas into a single local area.

#### **Appeals - WIOA Section 106(b)(5)**

##### **Denial of Local Area Designation**

A unit of general local government that requests but is not granted designation as a local Workforce Investment area under section 106 (b) (2) or (3) may submit an appeal to the State Workforce Development Council.

All such appeals shall be in writing and be filed within twenty (20) calendar days of the date the denial letter was mailed by the Governor or the Governor's designee. The appeal must include all factual and legal arguments as to why the appeal should be granted. The appeal shall be filed with the Chair of the Governor's Workforce Development Council, Idaho Department of Labor, Workforce Development Division, 317 West Main Street, Boise, Idaho 83735. The Chair of the Council, or the Chair's designee, shall promptly acknowledge receipt of the appeal.

The existing designated workforce areas will continue while the appeal is in progress and will be modified should the initial denial of designation be overturned.

##### **(a) Appeal to the State Workforce Development Council**

The appeal shall be deemed timely filed if it is received by the Chair of the Workforce Development Council within the 20-day period, unless the appeal is filed by mail, in which case the official postmark affixed by the U. S. Postal Service shall be deemed to be the date of filing. Any appeal that is filed late shall be summarily dismissed.

The Chair of the Council will select a hearing officer. The appeal shall be heard by the hearing officer not more than thirty (30) days after the appeal was filed. With the consent of the appealing party, the hearing may be held after the 30-day period, but in no case shall the hearing be conducted more than sixty (60) days after the appeal was filed.

The hearing officer shall inform the appellant of the date, time and place of the hearing by written notice mailed at least ten (10) calendar days in advance. The appellant shall have the right to present testimony and documentary evidence, to offer evidence in rebuttal, to present oral argument and to be represented by legal counsel. All testimony received by the hearing officer shall be under oath or affirmation. If the appellant retains legal counsel, federal WIOA funds cannot be used for remuneration.

An appellant must establish that it is entitled to designation as a local area according to this policy.

Within fifteen (15) days of the hearing, the hearing officer shall issue a recommended decision, which shall include findings of fact, recommendations and the basis therefore. That decision shall be mailed to the appealing party. The hearing officer shall file a copy of the recommended decision with the Chair of the Council.

The recommended decision of the hearing officer shall be placed on the agenda of the next Council meeting for disposition; however, if no Council meeting is scheduled within forty-five (45) days of the date the decision was issued, a special meeting of the Council, or a Committee designated by the Chair, shall be conducted within that 45-day period to accept, reject or modify the hearing officer's recommended decision.

In its deliberations, the Council shall consider only the evidence presented to the hearing officer. The Council shall not receive or consider any evidence not presented to the hearing officer. The decision of the Council shall be reduced to writing

and be mailed to the Governor and the appealing party. The decision must set out in summary fashion the Council's findings and conclusions. The Council may adopt, in whole or in part, the findings of fact, recommendations and rationale of the hearing officer.

(b) Appeal to USDOL

If a timely appeal of the decision does not result in the requested designation, the unit of general local government or grant recipient may further appeal the designation decision to the U.S. Secretary of Labor within thirty (30) days after receipt of the Council's written decision. The appeal to the Secretary must be consistent with the requirements of the Workforce Innovation and Opportunity Act. The Secretary, after receiving a request for review and upon determining that the entity has met the burden of establishing that it was not accorded procedural rights under the appeal process established in the state plan, or that the area meets the requirements of Section 106(b) paragraph (2) or (3) and 20 CFR 679.250, as appropriate, may require that the area be designated as a local area. As part of this determination, the Secretary may consider comments submitted by the Council in response to the appeal.

Appeals made to the Secretary must be filed no later than 30 days after receipt of written notification of the denial from the Council, and must be submitted by certified mail, return receipt requested, to:

Secretary  
U.S. Department of Labor  
Attention: ASET  
200 Constitution Ave NW,  
Washington, DC 20210,

A copy of the appeal must also be simultaneously provided to the State Council, submitted to:

Workforce Development Council  
Idaho Department of Labor  
Workforce Development Division  
317 West Main Street  
Boise, Idaho 83735

*The Secretary will notify the Governor and the appellant in writing of the Secretary's decision within 45 days after receipt of the appeal. In making this determination the Secretary may consider any comments submitted by the Governor in response to the appeals.*